

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Vincent L. Barr,)	C/A NO. 2:06-2355-CMC-RSC
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
John Battiste,)	
)	
Defendant.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint. Plaintiff is a pretrial detainee currently housed in the Williamsburg County Detention Center. Plaintiff complains of certain conditions of his confinement.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Robert S. Carr for pre-trial proceedings and a Report and Recommendation. On August 28, 2006, the Magistrate Judge issued a Report recommending that the complaint be dismissed without prejudice and without issuance and service of process, as the Magistrate Judge determined that this civil action number is duplicative of the complaint in *Barr v. Battiste*, D.S.C. Civil Action No. 2:06-2284-CMC-RSC (filed Aug. 14, 2006). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff filed objections on September 5, 2006.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court disagrees with the conclusions of the Magistrate Judge. While Plaintiff's two complaints raise similar allegations regarding the conditions at the Williamsburg County Detention Center, the underlying factual allegations are separate. Therefore, Plaintiff shall be allowed to proceed with these allegations.

However, for the sake of judicial economy, the court determines that this civil action should be dismissed, and the complaint from this matter filed as an amended complaint in D.S.C. Civil Action No. 2:06-2284-CMC-RSC. Defendant shall be given the opportunity to amend his answer (which was filed September 28, 2006, in D.S.C. Civil Action No. 2:06-2284-CMC-RSC) within the time period provided for in the Federal Rules of Civil Procedure.

This civil action number is hereby **dismissed without prejudice**. The Clerk shall file a copy of this order and Plaintiff's Complaint from this matter in D.S.C. Civil Action No. 2:06-2284-CMC-RSC.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
October 5, 2006

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